

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CECIL JOHNSON,)	
)	
Plaintiff,)	
)	
vs.)	No. 12-2118-SHM/tmp
)	
BELVEDERE GARDENS CONDOMINIUM)	
ASSOCIATION, INC.,)	
BARBARA (WILLIAMS) HASTINGS,)	
JOANN LEWALLEN, and)	
DINKELSPIEL RASMUSSEN & MINK)	
PLLC,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

On February 10, 2012, plaintiff Cecil Johnson, a resident of Memphis, Tennessee, filed a *pro se* civil complaint pursuant to Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 3601 et seq., the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, against the Belvedere Gardens Condominium Association, Inc. ("Belvedere Gardens"), Barbara (Williams) Hastings, JoAnn Lewallen, and the law firm of Dinkelspiel Rasmussen & Mink PLLC ("Law Firm"). On August 15, 2012, the plaintiff filed a motion seeking leave to amend his complaint to include additional factual allegations and supporting documents and to add his wife, Ruby Johnson, as an

additional plaintiff. On October 15, 2012, the court granted in part and denied in part plaintiff's motion for leave to amend the complaint. To the extent plaintiff sought to add additional factual allegations and documents, the motion was granted. However, the court denied the motion to the extent it sought to add Ruby Johnson as a plaintiff.

On May 28, 2013, the parties appeared before the court for a hearing on pending motions. Present at the hearing were Gerald Green, counsel for the plaintiff, and Peter Baskind and Robin Rasmussen, counsel for the defendants. At the hearing, defendants argued that Hastings, Lewallen, and the Law Firm are not proper defendants, and that the plaintiff has no basis to bring a race-based discrimination claim under the Fair Housing Act. Plaintiff stated that he did not and could not dispute the arguments made by the defendants. After consultation between the parties, the defendants made an *ore tenus* motion to dismiss defendants Hastings, Lewallen, and the Law Firm with prejudice, and dismiss any race-based discrimination claims under the Fair Housing Act with prejudice.

Pursuant to the statements of counsel at the May 28 hearing, the court recommends that the defendants' *ore tenus* motion be granted pursuant to Fed. R. Civ. P. 12(b)(6), and that (1) all claims against defendants Hastings, Lewallen, and the Law Firm, as well as all race-based discrimination claims under the Fair Housing

Act against all defendants, be dismissed with prejudice for failure to state a claim upon which relief can be granted, and (2) defendants Hastings, Lewallen, and the Law Firm be dismissed as parties to this action.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

May 28, 2013
Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, A PARTY MAY SERVE AND FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. A PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY. FED. R. CIV. P. 72(B)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.